

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Lockheed Martin Global Telecommunications,
Comsat Corporation, and Comsat General
Corporation, Assignor
and
Telenor Satellite Mobile Services, Inc., and
Telenor Satellite, Inc., Assignee
Applications for Assignment of Section 214
Authorizations, Private Land Mobile Radio
Licenses, Experimental Licenses, and Earth
Station Licenses
and
Petition for Declaratory Ruling Pursuant to
Section 310 (b) (4) of the Communications Act

File Nos. SES-ASG-20010504 00896
ITC-ASG-20010504 00302
ISP- PDR-20010510 00025
ULS-0000449956
41-EX-AL-2001
42-EX-AL-2001
43-EX-AL-2001
44-EX-AL-2001

ORDER ON RECONSIDERATION

Adopted: July 8, 2002

Released: July 12, 2002

By the Commission: Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. By Memorandum Opinion and Order released December 18, 2001, in the above-captioned matter, the Commission approved applications by Lockheed Martin Global Communications ("LMGT"), Comsat Corporation ("Comsat"), and Comsat General Corporation ("Comsat General") to assign certain Title II common carrier authorizations and Title III radio licenses held by Comsat to Telenor Satellite Services Holdings, Inc. ("TSSH"), Telenor Satellite Inc. ("Telenor Satellite"), and Telenor Broadband Services AS ("Telenor Broadband") (collectively referred to as "Telenor"). These

1 In the Matter of Lockheed Martin Global Telecommunications, et al., Order and Authorization, FCC 97-422 (rel. Dec. 18, 2001) (Telenor Order).

2 TSSH is the entity to whom the Commission approved the transfer of the Comsat Inmarsat operations. The original party filing in this proceeding, however, was Telenor Satellite Mobile Services, a wholly-owned subsidiary of Telenor ASA incorporated under the laws of the State of Delaware. Effective October 17, 2001, the company changed its name to TSSH but did not change its ownership. The ultimate parent of both Telenor Satellite Mobile Services and TSSH is Telenor ASA, a Norwegian company. Telenor ASA incorporated Telenor Satellite Mobile Services/TSSH expressly for the purpose of acquiring the Comsat operations.

transfers were in furtherance of Telenor's acquisition of Comsat Mobile Communications ("CMC"), a business unit of Comsat Corporation. CMC was a facilities-based telecommunications operator that provided mobile satellite services to maritime, aeronautical, and land mobile customers in the United States using capacity on the Inmarsat satellite system. On January 15, 2002, Litigation Recovery Trust ("LRT") filed a Petition for Reconsideration of the authority to transfer the subject authorizations and licenses.<sup>3</sup> On January 24, 2002, the Chief, International Bureau released an Order denying a request by LRT for a stay of the *Telenor Order*,<sup>4</sup> in which the Bureau considered essentially the same arguments in the LRT petition now before us. Subsequently, Telenor filed an opposition to LRT's petition in which it notes that the Commission has previously considered LRT's arguments.<sup>5</sup> Telenor also argues that LRT did not file the petition for any legitimate purpose, but for the purposes of harassment and extracting a settlement.<sup>6</sup>

2. LRT represents certain individuals and entities that have been pursuing unsuccessfully claims against Comsat over several years in various fora, including the Commission. The claims arise out of disputes over operation of a former Comsat subsidiary, BelCom, Inc.,<sup>7</sup> of which one member of LRT was previously a director and owner.<sup>8</sup>

<sup>3</sup> LRT, Petition for Reconsideration ("LRT Petition"), filed January 12, 2002.

<sup>4</sup> In the Matter of Lockheed Martin Global Communications, *et al.*, Order, DA 02 190, rel. January 24, 2002.

<sup>5</sup> Telenor, Opposition to Petition for Reconsideration, filed January 28, 2002, at 3-5.

<sup>6</sup> *Id.* at 5-7.

<sup>7</sup> Lockheed Martin sold BelCom to Weissker, Inc. BVI, a British Virgin Islands company, in late 2001.

<sup>8</sup> LRT represents claims by William L. Whitely, Scott Robb, John T. Whitely and William H. Hallenbeck, and includes the Committee to Restructure the International Satellite Organizations ("CRISO") and BelCom Minority Shareholders and Claimants Committee ("BelCom Committee"). In 1998, Comsat successfully brought legal action in Delaware Chancery Court against a former defendant shareholder of BelCom, Scott Robb, who is one of those represented by LRT. The court found that Robb was in breach of fiduciary duty to BelCom by pursuing fraudulent claims against the company. *BelCom, Inc. v. Scott Robb*, Del. Civil Action No. 14663 (April 28, 1998), *aff'd. subnom. Scott Robb v. BelCom, Inc.*, 725 A.2d 443 (Jan. 20, 1999), rehearing denied (Feb. 11, 1999). In 2001, the Delaware Chancery court denied William Whitely's motion to vacate the 1998 *BelCom* decision and a sanctions Order issued February 21, 2001. *BelCom v. Robb*, Del. Ch. Case No. 14463, Order, August 21, 2001. A New York court has disbarred Scott Robb for conduct arising from actions against BelCom. *In re Robb*, N.Y. App. Div., October 23, 2001. And, the United States District Court for the Southern District of New York has (1) dismissed a Securities Act claim brought by LRT against Comsat, *Whitely v. Comsat*, S.D.N.Y. Order, Case No. 00 Cir. 9401 (October 29, 2001); and (2) dismissed LRT's complaint against Comsat, that made various allegations under federal and state law. *Whitely v. Comsat*, S.D.N.Y., Case No. 00 Cir. 9401, Memorandum and Order (September 24, 2001). See also *William L. Whitely, et al. v. FCC*, Case No. 00-4207 (2d Cir. June 1, 2001). That case concerned an appeal by LRT of the Commission's decision in Comsat Corporation, *et al.*, 13 FCC Rcd 2714 ("Consolidated Order")(1998). In the Consolidated Order, the Commission had denied LRT's arguments that Comsat had violated Section 201(c)(8) of the Satellite Act. The Second Circuit Court of Appeals dismissed LRT's appeal for failure to prosecute. On June 25, 2001, the court dismissed LRT's Motion to reinstate its petition. On August 24, 2001, the court denied LRT's petition for reconsideration of the court's order to dismiss its original petition. In that order, the court also granted the Commission's request that the court require LRT to pay the

3. In the petition before us, LRT challenges the Commission's conclusion in the *Telenor Order* that transfer of Comsat's Inmarsat operations to Telenor will serve the public interest. LRT seeks to reargue the positions in its petition against allowing the Telenor acquisition of Comsat's Inmarsat operations. LRT argues that Lockheed's decision to sell Comsat's operations to Telenor violates the ORBIT Act.<sup>9</sup> LRT argues first that Lockheed's decision to sell Comsat's operations violates the commitments it allegedly had made to Congress to obtain permission to acquire Comsat. LRT attempts to bolster this argument by referring to a December 7, 2001, press release in which LMGT stated that it intends to sell all of Comsat's operations. LRT argues that this announcement shows that LMGT intends to violate the promises it made to Congress under the ORBIT Act that, in return for authorization to acquire Comsat, it would make substantial investments in Comsat and return it "to its former leadership position in the telecom industry."<sup>10</sup> Second, LRT argues that LMGT's sale of Comsat to Telenor violates the provisions in Section 621(2) of the Orbit Act, by allowing Telenor, a former Signatory of INMARSAT, to increase its percentage of ownership of the privatized Inmarsat. LRT also challenges the conclusion of the Commission's order that the transfer of assets to Telenor was lawful under the foreign ownership provisions of Section 310 of the Communications Act. LRT also challenges the finding that the transfer would serve the public interest. LRT argues that Telenor did not provide sufficient information on which the Commission could base a public interest conclusion and argues that Telenor's 79 percent ownership by the Kingdom of Norway gives it the power to act anticompetitively.<sup>11</sup>

4. LRT seeks to introduce "new evidence" that Telenor had won a contract to provide telecommunications services to NATO by underbidding the carrier that has previously provided the services. LRT notes that Telenor's bid undercut the incumbent provider by \$8 million. LRT states that it "assumes" that the incumbent carrier was providing service at or near the market price for the service and argues that this substantial underbid raises "immediate questions concerning the subsidization of Telenor's business operations by the Kingdom of Norway."<sup>12</sup>

## II. DISCUSSION

5. We previously rejected LRT's arguments in approving the transfer of CMC to Telenor. After reviewing LRT's pleading, we find nothing that would require us to change those

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Commission's attorney fees.

<sup>9</sup> The Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act, 47 U.S.C. §§ 761-9 (2001), was enacted to amend the Satellite Act and the INMARSAT Acts to provide for the privatization of INTELSAT and INMARSAT and thereby to promote a competitive market for satellite communications.

<sup>10</sup> LRT Petition at 7.

<sup>11</sup> The ultimate parent of TSSH and the other Telenor companies is Telenor ASA, a Norwegian company whose stock is publicly traded on the Oslo, Norway, and NASDAQ exchanges. Telenor ASA is 79 percent owned by the Kingdom of Norway. The remaining 21 percent of Telenor's stock is held by members of the public, 14 percent by non-Norwegian nationals.

<sup>12</sup> LRT Petition at 5.

conclusions. More specifically, we affirm our prior conclusions that the acquisition of CMC by Telenor was permissible under Section 310 of the Communications Act and that such acquisition would serve the public interest. The Commission noted that Section 310(a) forbids the granting of a common carrier radio license to a foreign government or the representative of a foreign government and that Sections 310(b)(1) and (b)(2) forbid the granting of such a license to a foreign corporation.<sup>13</sup> We found that the proposed transaction did not involve direct ownership by a foreign government or a foreign corporation. Rather, the transaction involved indirect ownership of a U.S. corporation by foreign nationals, foreign corporations, and foreign governments.<sup>14</sup> Section 310(b)(4) allows indirect foreign ownership of a corporation up to 25 percent and allows the Commission to approve indirect foreign ownership that exceeds 25 percent if we conclude that it will not serve the public interest to prohibit such ownership. The Commission noted that the foreign ownership of Telenor exceeds the 25 percent benchmark but concluded that approval of the Telenor acquisition of CMC would serve the U.S. public interest.<sup>15</sup> In the *Foreign Participation Order*,<sup>16</sup> the Commission concluded that the public interest would be served by permitting investors from countries, such as Norway, that are members of the World Trade Organization (WTO) to invest in U.S. holders of common carrier, aeronautical fixed and aeronautical *en route* licenses in excess of the 25 percent benchmark in Section 310(b)(4). The Commission adopted a rebuttable presumption that such investment generally does not raise competitive concerns.<sup>17</sup> We concluded that Telenor, an investor from a WTO Member country, was entitled to a rebuttable presumption that its investment in Telenor would not harm the U.S. public interest.<sup>18</sup> LRT did not, either in its comments on the Telenor acquisition of CMC or in its petition for reconsideration, provide information to rebut the presumption. The Commission concluded that the entrance of Telenor to the U.S. satellite market would not threaten competition in the U.S. market for satellite communications and decided that it would approve the transfer of CMC's operations without imposing special conditions.<sup>19</sup>

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<sup>13</sup> *Telenor Order* at para. 21 and f.n. 66, citing.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at para. 22 and fn 69, citing Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 310 (d) of the Communications Act, and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd 9779 (2001) ("Voice Stream/Deutsche Telekom Order"). In the Voice Stream/Deutsche Telekom Order, the Commission stated that "[p]ursuant to the terms of the [Communications Act], indirect ownership of a licensee by a foreign government, foreign corporation, and aliens resulting from the proposed transaction should be addressed only under Section 310(b)(4)."

<sup>16</sup> In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order*, IB Docket No. 95-22, 12 FCC Rcd 23,891 (1997) (*Foreign Participation Order*).

<sup>17</sup> *Id.* at 23,940.

<sup>18</sup> *Telenor Order* at para. 26.

<sup>19</sup> *Id.* at para. 35.

6. In its reconsideration petition, LRT argues that “new evidence,” the fact that Telenor underbid the incumbent carrier to win the NATO telecommunications services contract, somehow shows that the Kingdom of Norway is subsidizing Telenor’s attempts to provide services to NATO. We do not agree that the “evidence” cited by LRT shows anything other than the fact that Telenor won the bid competition. LRT does not offer any evidence of wrongdoing on the part of Telenor. LRT states only that it “assumed” that the incumbent carrier was providing service at cost and concluded on that basis that the only way Telenor could underbid it was that the Kingdom of Norway is subsidizing Telenor. LRT does not offer any evidence to support its assumptions or the conclusions it draws from those assumptions.

7. More importantly, LRT has failed to show the relevance of its “evidence” to the U.S. market. In the *Foreign Participation Order*, the Commission stated that the presumption in favor of entry by an applicant from a WTO country could be rebutted only in “exceptional” circumstances” where it can be shown that the entry raises a “very high risk” to competition in the U.S. market.<sup>20</sup> The Commission noted that such risk might be shown by a pattern of past conduct that indicates that an applicant is unlikely to abide by Commission’s rules and policies.”<sup>21</sup> LRT has not shown that Telenor represents a serious threat to competition in the U.S. market. Indeed, LRT has not shown that the NATO contract has any bearing on the U.S. market. Even were we to assume, as we do not, that the NATO contract shows that the Government of Norway agreed to subsidize Telenor for the purpose of engaging in anticompetitive conduct, LRT has not shown that such a result would endanger competition in the U.S. market. We, therefore, conclude that LRT has not shown anything that would rebut the presumption in favor of allowing Telenor, as a company from a WTO country, to enter the U.S. market.

8. We observed in the *Telenor Order* that, because Norway is a member of the European Free Trade Association and subject to the Agreement on the European Economic Area, it is bound by the European Union’s rules that prohibit aid by a “member state or through state resources in any form whatsoever which distorts or threatens to distort competition” by favoring a particular company.<sup>22</sup> We continue to believe that, should Telenor to engage in the future in competitive misconduct, we have the ability to detect and control such problems under our regulatory safeguards and U.S. antitrust laws. LRT has shown nothing which would call those conclusions into doubt.

9. We are also unpersuaded by LRT’s argument that the Commission should have denied the application to transfer CMC’s operations to Telenor because CMC’s parent, Lockheed Martin, violated the ORBIT Act. We do not agree with LRT that Lockheed Martin’s decision to sell CMC’s operations to Telenor represents a violation of the ORBIT Act. The ORBIT Act permitted Lockheed Martin to acquire Comsat by eliminating certain provisions of the Satellite Act that placed restrictions on who could own Comsat. We do not agree with LRT, however, that a subsequent decision by Lockheed

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<sup>20</sup> *Foreign Participation Order*, 12 FCC Rcd at 23,940.

<sup>21</sup> *Id.* For example, the Commission indicated that this might be shown by a showing that an applicant “has engaged in adjudicated violations of Commission rules, U.S. antitrust or other competition laws, or in demonstrated fraudulent or other criminal conduct.” *Id.*

<sup>22</sup> *Voice Stream/Deutsche Telekom Order* at para. 31 and fn103, citing Agreement on European Economic Area, Art. 61-62 (1992).

Martin to dispose of CMC's operations contravened any provision of the ORBIT Act. It is not for this Commission to decide whether Lockheed Martin made specific promises to Congress or that it has not lived up to those promises. Congress did not include any ownership stipulation in the ORBIT Act and there is no legislative history indicating an intent to impose such a stipulation. We are, thus, similarly unpersuaded that the "new evidence" LRT cites in its reconsideration petition that Lockheed Martin has decided to sell all of Comsat represents a further "violation" of the ORBIT Act. Nor do we agree that Lockheed Martin's subsequent decision to sell Comsat would require us to reverse the Commission's decision in the *Telenor Order* that the sale of CMC is consistent with the ORBIT Act.

### III. OTHER MATTERS

10. We note the following with regard to Comsat/Lockheed's claims that LRT and/or its members' primary aim is to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute involving the LRT members and Comsat. We take Comsat/Lockheed's claims very seriously. As described earlier in this order, there has been a documented pattern of conduct by LRT and/or its members with regard to Comsat and/or its successors or assigns that indeed appears to go beyond legitimate advocacy. In such cases, it is well-established that the Commission and its staff may impose sanctions upon parties participating in Commission proceedings if they file pleadings primarily for abusive purposes.<sup>23</sup> These sanctions could include restrictions on participation in Commission proceedings to prevent abuse of its processes.<sup>24</sup> In considering challenges to pending applications, "the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests."<sup>25</sup> The Commission has authorized its Bureaus and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission's processes.<sup>26</sup> Given the Commission's goal of encouraging participation in FCC proceedings, however, it only considers the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear. In this regard, a pleading filed primarily to harass an applicant rather than to air legitimate, substantive objections relevant to the proceeding in which they are filed, is a situation that would justify a summary dismissal of such pleading.<sup>27</sup> Alternatively, should a party engage in such an abusive course of conduct before the agency, the Commission may decide to require the party to obtain the Commission's prior permission to file documents based on a prior showing of public interest.<sup>28</sup> We hereby expressly warn LRT and/or its

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<sup>23</sup> See, e.g., In re Application of Nationwide Communications, Inc., *Memorandum Opinion and Order*, FCC 98-7, 13 FCC Rcd 5654, 5655-56 (1998) (*Nationwide Communications*).

<sup>24</sup> See, e.g., In re Applications of Radio Carrollton, et al., *Memorandum Opinion and Order*, Docket Nos. 19636 and 19637, 69 FCC 2d 1138, 1148-55 (1978).

<sup>25</sup> *United Church of Christ v. FCC*, 359 F. 2d 994, 1005 (D.C. Cir. 1966).

<sup>26</sup> See Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings, FCC 96-42, 11 FCC Rcd 3030 (1996).

<sup>27</sup> See *Nationwide Communications*, 13 FCC Rcd at 5655-56.

<sup>28</sup> See *In re Martin-Trigona*, 592 F.Supp. 1566, 1568 (D. Conn. 1984); In re Notice to John Cervase, Letter

members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency.

**IV. CONCLUSION**

11. For the reasons shown above, we conclude that LRT has not shown enough for us to reconsider our approval of Telenor's acquisition of CMC.

**V. ORDERING CLAUSES**

12. Accordingly, IT IS ORDERED that the above-referenced Petition for Reconsideration in this proceeding filed by Litigation Recovery Trust is hereby DENIED in all respects.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary